

Appl. No. 10/771,259

REMARKS

Claim 2 has been amended to reflect the language discussed with the Examiner during the Interview. Support for the term "active drug substance" can be found throughout the Specification, for example in the following columns: column 3, lines 43, 45, 54 and 60; column 5, lines 64-65; column 6, lines 21 and 32-34; column 9, line 65; column 10, lines 2 and 13; and column 9, lines 2 and 34.

Claims 8-10 and 13-15 have been amended by inserting the phrase "based on the weight of the pharmaceutical composition." Support for the amendment can be found in the Specification in column 5, line 66 to column 6, line 9.

Claim 24 has been amended to correct the claim dependency.

No new matter has been added.

Claim Informalities

The Examiner notes that claim 24 is dependent on "134" rather than "13."

Applicants have amended the claim, correcting the dependency.

Reissue Oath

The Examiner indicates that a new oath is required that states why the claims are considered too broad over specifically identified prior art. A revised Reissue Oath is enclosed that specifically states that claim 1 may be anticipated by prior art and that claim

1 has been amended to distinguish over the Aoki et al prior art reference.

Rejections Under 35 U.S.C. § 112, first paragraph

The Examiner has maintained his rejection of claims 8-16, 24, 25 and 39 as being indefinite for failing to particularly point out the relationship of the claimed percentages to the pharmaceutical composition.

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Applicants have amended claims 8-10 and 13-15 to indicate that the percentage cited (w/w) is based on the weight of the pharmaceutical composition, thereby overcoming the rejection.

Rejections Under 35 U.S.C. § 103

The Examiner has maintained his rejection of claims 1-4, 7, 13-21 and 23-40 as obvious over Levin (USP 5,656,301), indicating that the language changes discussed during the Interview would overcome his rejection.

Applicants have amended the claims as discussed, using the language agreed upon during the Interview, thereby overcoming the rejection.

The Examiner has also maintained his rejection of claims 1-5, 7-10, 13-21 and 23-40 as obvious over Smith (USP 4,902,678) in view of Underwood (USP 3,317,384). He indicates that the response to this rejection has been omitted from his electronic file, but that he was persuaded by Applicants' arguments during the Interview. Applicants recapitulate the arguments here.

The Smith reference is directed only to a combination of antiviral substances that is claimed to be synergistic. There is no suggestion or teaching in the reference that synergy could be obtained or maintained with the addition of other types of drugs. Underwood is directed to the treatment of eye infections. Here, glucocorticoids are the primary treatment agent and Underwood discusses the side effects associated with them. Underwood suggests the addition of an antiviral substance to reduce the side effects of glucocorticoid treatment of eye infections. Thus, Underwood is not concerned with improving the efficacy of an antiviral treatment, but minimizing the side effects associated with glucocorticoid treatment. Underwood effectively teaches away from the use of glucocorticoids because of their side effects. As a consequence, one skilled in the art would not be motivated to combine Smith and Underwood, as discussed at length in the previously submitted Declaration of Dr. Spruance.

Conclusion

In view of the above remarks, all the claims remaining in the case as amended, including newly added claims, are submitted as defining non-obvious, patentable subject

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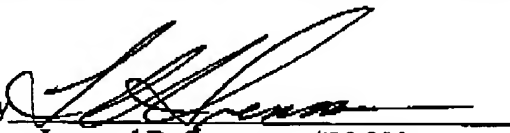
matter. Reconsideration of the rejections and allowance of the claims are respectfully requested.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Leonard R. Svensson (Reg. No. 30,330) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By 
Leonard R. Svensson, #30,330

LRS/SWG
1718-0214P

P.O. Box 747
Falls Church, VA 22040-0747
(714) 708-8555